

MINUTES
ENERGY FACILITY SITE EVALUATION
COUNCIL OF WASHINGTON

February 17, 2004 - Regular Meeting
925 Plum Street S.E., Building 4, Room 308
Olympia, Washington - 1:30 p.m.

ITEM 1: CALL TO ORDER

CHAIR LUCE: The regular meeting of the Washington State Energy Facility Site Evaluation Council meeting for Tuesday, February 17, 2004 will come to order. Clerk, call the roll, please.

ITEM 2: ROLL CALL

EFSEC Council Members

Community, Trade & Economic Development

Richard Fryhling

Department of Fish & Wildlife

Chris Towne

Department of Natural Resources

Tony Ifie

Utilities and Transportation Commission

Tim Sweeney

Kittitas County

(via phone) Patti Johnson

Chair

Jim Luce

MR. MILLS: The Chair is present and there is a quorum.

OTHERS IN ATTENDANCE

EFSEC STAFF AND COUNSEL

Allen Fiksdal

Mariah Laamb

Mike Mills

Ann Essko, AAG

Irina Makarow

Shaun Linse - Court Reporter

Tammy Talburt

EFSEC GUESTS

Bill LaBorde – NW Energy Coalition

David Reich – Ecology

Chuck Lean – Kittitas Valley Wind Project

John Lane – CFE, Kittitas Valley Wind

Mark Anderson – CTED EP

NO. 3: APPROVAL OF MINUTES

CHAIR LUCE: All right. We have as the first item on the agenda the approval of minutes of September 30, 2003, a special meeting; and January 20, 2004, regular Council meeting. Have the Councilmembers had an opportunity to review the minutes?

MS. TOWNE: Yes.

CHAIR LUCE: And have some Councilmembers had an opportunity to –

MS. TOWNE: Yes, some Councilmembers have, and I've given my markup to staff.

CHAIR LUCE: Thank you very much. Were there substantive corrections or additions, Councilmembers?

MR. IFIE: I have my correction on Page 2 -- well, not a correction, a proposed changed on Page two, I would like to forward to Mariah.

CHAIR LUCE: Is it a substantive change?

MR. IFIE: No, it's not substantive.

CHAIR LUCE: Then we'll receive Councilmember Ifie's change to the minutes of January 20.

And with those two changes are there any other changes, additions, corrections, deletions?

Hearing none, is there a motion to accept the minutes of September 30 and January 20?

MR. IFIE: I so move.

MS. TOWNE: Second.

CHAIR LUCE: All in favor say aye.

COUNCILMEMBERS: Aye.

ITEM NO. 4: ADOPTION OF THE PROPOSED AGENDA

CHAIR LUCE: The next issue is the adoption of the proposed agenda. Have Councilmembers had a chance to review that proposed agenda?

MS. TOWNE: Yes.

CHAIR LUCE: Any corrections, additions?

MR. MILLS: I would like to add one item.

CHAIR LUCE: Yes.

MR. MILLS: Under project update following Chehalis, I would like to make a brief report on the Satsop Combustion Turbine Project.

CHAIR LUCE: All right. We'll note that and amend the agenda accordingly. With that amendment, the agenda is adopted as written.

ITEM NO. 5: PROJECT UPDATES

<i>Kittitas Valley Wind Power Project</i>	<i>Irina Makarow, EFSEC Staff</i>
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CHAIR LUCE: Project updates. The first information item, Irina, Kittitas Valley Wind Power Project.

MS. MAKAROW: We received a request for preemption from the Applicant last Monday, and that was distributed to the Councilmembers and all the parties, and this week we do have a prehearing conference this Thursday in Ellensburg. If you have any questions about travel, please contact Mariah. As there's no remote, those of you who are involved in that project, please remain after the meeting today, so we can have a quick deliberative session on that issue.

CHAIR LUCE: All right.

<i>Wild Horse Wind Power Project</i>	<i>Irina Makarow, EFSEC Staff</i>
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MS. MAKAROW: With respect to the Wild Horse Wind Power Project, Zilkha is working on their application, and we understand that they are going to be submitting it to us at the beginning of March. That's all I have to report on that.

<i>BP Cherry Point Project</i>	<i>Irina Makarow, EFSEC Staff</i>
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MS. MAKAROW: For BP Cherry Point Project, subsequent to the last Council meeting where the Applicant and Counsel for Whatcom County came in and made their joint request, reiterating their joint request for extending the post-hearing briefing schedule, a Council order was issued last week that set up the schedule with a report coming into the Council in the middle of March where the County and the Applicant would state if they had come to any conceptual agreements on settlement. And then out into June if the settlement agreement -- if there is a conceptual agreement, the actual settlement agreement would come in during June, and that is all I have to report.

CHAIR LUCE: All right. Patti, do you have any questions or does any other Councilmembers have any questions of Irina with respect to Kittitas Valley Wind Power Project?

MS. JOHNSON: No, I have no questions at this time.

CHAIR LUCE: All right, Patti, you're more than welcome to stick around for the rest of this discussion.

MS. JOHNSON: No, I'll call back in later or have someone call me later.

MS. MAKAROW: We'll call you later, Patti.

MS. JOHNSON: Thank you.

<i>Air Permits</i>	<i>Irina Makarow, EFSEC Staff</i>
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CHAIR LUCE: Air permits.

MS. MAKAROW: I just wanted to begin briefing the Council on the fact that we're going to be getting into a number of air permitting actions with some of the permitted projects. For example, both Wallula and Sumas are going to be up for extensions of their PSD and Notice of Construction permits, and the Chehalis Generation Facility is going to be submitting an application for a Title 5 Permit. So that means the typical development of the draft permit by our contractor and Ecology or the clean air agency for Chehalis and, of course, the public comment process and hearings will also occur. So in the next couple of months, probably the second half of the summer, you will be busy on those items.

CHAIR LUCE: Thank you for the heads up.

MS. TOWNE: Could you quickly tell us what Title 5 is.

MS. MAKAROW: Title 5 is a federal program that EFSEC has been delegated to implement, and the purpose of Title 5 is to regroup all of the air permitting conditions into a single document, so that citizens can find them easily. So basically what is going to happen is that our air permit writer is going to look at all of the permits that we issued for the Chehalis Generation Facility and put them all together in a document, so that a citizen could go in there and look and see exactly what the conditions are.

MS. TOWNE: Is that applicable to other emitters, Sumas, for instance?

MS. MAKAROW: Yes, all of our facilities except for the wind generation facilities are major facilities, and they will all be required to get Title 5 permits, and it kicks in one year after they have begun operation that they have to submit the application.

<i>Columbia Generating Station</i>	<i>Mike Mills, EFSEC Staff</i>
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CHAIR LUCE: Any other questions from Councilmembers? Mike, what do you have to tell us about the Columbia Generating Station?

MR. MILLS: Columbia Generating Station, they're operating at 100 percent power, and they've been on line for 229 consecutive days. And that's all I have to report on Columbia.

CHAIR LUCE: I was going to say Energy Northwest has provided us with a copy of their annual report.

MR. MILLS: Yes. The annual report is a good reference document about Energy Northwest and their projects and reports on many initiatives that the company is undertaking.

<i>WNP-1/4 Site Restoration</i>	<i>Mike Mills, EFSEC Staff</i>
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CHAIR LUCE: WNP-1/4 Site restoration.

MR. MILLS: I would just report on February 3, 3.5 million dollars was wire transferred to the State of Washington. So we have received the off-site mitigation monies, and they're in the State Treasurer under CTED and EFSEC control.

MS. TOWNE: Have we heard anything from Fish and Wildlife as to the McWhorter property?

MR. MILLS: No, we haven't, and I intend to follow up on that. I need to talk to Jim on that.

<i>Chehalis Generation Facility</i>	<i>Mike Mills, EFSEC Staff</i>
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CHAIR LUCE: Chehalis.

MR. MILLS: Chehalis. For the past two weeks the plant has been running steadily at between 500 and 520 megawatts. They expect to run all the rest of this week. I think I reported before that they've almost completed all of the noise silencer kind of activities in fabricating the last two of the silencers and expect to have those installed in the next several weeks. And they're doing ongoing maintenance work at the plant in addition to being in operation. I've asked that company representatives come either to the March 15 or April 5 meeting to report on noise and operational history. It's been not quite six months they've been in operation, so we will have more from the company on that.

<i>Satsop CT Project</i>	<i>Mike Mills, EFSEC Staff</i>
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CHAIR LUCE: Okay. Cowlitz Generating Project.

MR. MILLS: I wanted to add, Jim, the Satsop.

CHAIR LUCE: Yes, I'm sorry. I apologize.

MR. MILLS: I believe in your packet's there's a copy of a February 12, 2004, letter from Perkins Coie entitled Satsop CT Project Request for Technical Amendment of SCA. For today's meeting, I just wanted that to be noted in the record that we've received this request and staff will begin processing this and working with Karen for the Councilmembers on agreeing on a process that they are going to use in proceeding with that review. And this involves a number of water issues that were associated with the project after it was approved, and there were some discrepancies noted between the project design and some of the site certification agreement conditions regarding water use. Duke Energy and Energy Northwest met with Department of Ecology and Fish and Wildlife representatives and have discussed and reached agreement on some proposed changes, and that's what we'll be reviewing.

MS. TOWNE: The letter from Ms. McGaffey makes reference to certificate holders DFW and DOE - MOU's copy of which is enclosed, but I didn't get it. Should we review that?

MR. MILLS: I deliberately did not include that with your information today, just the letter, but I will give Councilmembers the entire package next week.

MS. TOWNE: Good.

CHAIR LUCE: For Councilmember background, this issue percolated for the better part of a year in various manifestations and involved discussions at length about such issues as quench water and NPDES permits and other issues and finally was resolved in an amicable way to everybody's satisfaction. So I think what this is a culmination of those long, long -- a memorialization of long negotiations between the parties.

MR. FIKSDAL: You probably want to get it finalized and memorialized in the Site Certification Agreement, so that Duke Energy can do something with the project.

CHAIR LUCE: So they can move the project along.

MS. TOWNE: Just for my information because I haven't seen one of these before, does this go back to the governor for a checkoff?

MR. FIKSDAL: According to our rules, if an amendment to a Site Certification Agreement (SCA) has changed the project significantly or it has significant environmental impacts, then it needs to go back to the Governor.

MS. TOWNE: So not in this case, I'm assuming.

MR. FIKSDAL: Correct.

MR. MILLS: The company is proposing that.

MR. FIKSDAL: A technical amendment under our rules would just be something that would be issued by the Council, not having to go to the Governor.

MR. MILLS: It speaks about a Council issue approving it by Council resolution.

CHAIR LUCE: All right.

<i>Cowlitz Cogeneration Project</i>	<i>Allen Fiksdal, EFSEC Manager</i>
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MR. FIKSDAL: Cowlitz. Mike and I were here when the Cowlitz SCA was approved back in 1994 on February 7th and went through several amendments. But in the last amendment it states, "if commencement of this construction has not begun by February 7, 2004" -- which back then seemed like way in the future -- "rights under this agreement to construct and operate the Cowlitz Cogeneration Project shall cease." So by terms of the agreement this SCA ceased on February 7th. We have under WAC 463-36-020, Termination of a Site Certification Agreement, except pursuant to its own terms an amendment to the agreement, and then we have a whole bunch of rules about amendments. So this is not just termination. It's not an amendment. So I think at the next meeting what we propose is that Council have some resolution memorializing that the SCA died of its own accord and officially render it under.

CHAIR LUCE: I would support that. I'm not sure you even need a resolution.

MS. TOWNE: It is what it is.

MR. FIKSDAL: I would like the Council to go through some sort of formal process.

CHAIR LUCE: That's fine. We'll go on the record recognizing the agreement. That would be fine. Any questions about the demise of the Cowlitz Cogeneration Project, which I believe was the only one that we ever did an expedited process on?

MR. FIKSDAL: It was an expedited process. We did it in six months, and it was pretty unusual.

CHAIR LUCE: It was a cogen.

MR. FIKSDAL: It was sponsored by Weyerhaeuser. Originally it was sponsored by Weyerhaeuser and Mission Energy. They went into partnership to build a cogeneration facility at the Weyerhaeuser Longview mill down near the river. After the SCA was issued, there was a falling out between Mission Energy and Weyerhaeuser, and we amended the SCA to delete Mission Energy and Weyerhaeuser would just hold the SCA. They were going to do something similar to what the BP plant is proposing. They were going to take a bunch of boilers off-line at the mill and use the cogeneration for the steam load. It was a good project. It was going to

reduce the air emissions. Everybody wanted it. But essentially Weyerhaeuser used it as a bargaining chip with Cowlitz PUD to get cheaper power, which is what ended up happening in the long run. Just some historical facts there.

CHAIR LUCE: In the long run because then Cowlitz PUD rates could have gone with the cogen project, but that's the long run.

MR. FIKSDAL: I guess I'll add we did talk to some representatives at Weyerhaeuser, so they're aware that it had died, and we had offered them the opportunity to attend the meeting, and they declined to do so.

ITEM NO. 6: EFSEC RULES

<i>Rules Review Discussion</i>	<i>Chris Towne, WDFW</i>
CHAIR LUCE: The next issue on the agenda is EFSEC Rules, rules review discussion. Myself and Chris Towne are noted as leading this discussion. It's an information item, but I think I'm going to ask Chris to lead the discussion. She and Hedia have been undertaking a reorganization of the proposed rules in Chapter 463 which I believe is now complete. Chris.	
MS. TOWNE: I have not seen Hedia's final work product, but she was going to hand it in.	
CHAIR LUCE: It has been turned in, so I'm going to ask you to discuss that, and then I'm going to ask Allen to talk in turn about how he and staff intend to proceed with the work product that has been turned in both by yourself and Hedia. Allen has some comments with respect to the schedule as it will be modified going forward and some comments with respect to the SEPA Determination of Non-Significance (DNS), so why don't you start.	
MS. TOWNE: Basically our undertaking was to reorganize the rules. If you're familiar with the SEPA Guidelines, 197-11 WAC, they're organized in chapters. And we have done a similar thing. The first section is how does EFSEC organize itself, agency procedures? Secondly, performance standards and mitigation where there are separable discrete pieces like noise or seismicity. The third is how do you apply for an SCA with all its component parts? And the fourth one is site certification. When you have a SCA, what does that mean? How do you change it? Specifics on site preservation and restoration. And then the last is other permits, and that's NPDES, the PSDs where we have jurisdiction and have rules on that jurisdiction. Then within each of these sections we have tried to sort out what is appropriate to be in an EFSEC rule and what should be incorporated by reference or cited to in somebody else's rules, like Ecology or Fish and Wildlife. There are a lot of things that drifted into, say, the wetland section. It purported to be a proposed regulation, but in fact it was a lot of narrative; a lot of "you should," "you ought to," "here's our preference," "here's our priorities." Are these rules? No, because we couldn't cite any rule foundation or statutory foundation for those. So that's the sort of internal editing that we undertook, and it's simply in the form of a proposal.	
I would like some buy-in on the organization. This is an effort to make it easier for either an applicant or a citizen or a member of the Council to figure out what the rules are because they'll all be grouped according to their purpose. So anything, for instance, that has to do with how do you get copies from EFSEC, you know that's an agency procedure thing. Specific petitions for rule making, if you want to know where that would be found, it's going to be up here in this agency procedure thing. We have not yet gotten into the question of renumbering, and we will leave that to the discretion of the code reviser. So hopefully they will be numbered sequentially	

within the parts that we have proposed. Does anybody have any strong feelings one way or the other about this approach?

CHAIR LUCE: I do. Staff, as I understand, likes it. They've got to live with it, and my recommendation is since they've got to live with it, I like it, and I think the Council ought to like it. I'm serious. I mean there are certain things like time lines, 30 days, 60 days, 90 days, and organizational stuff that is not policy. It is ministerial in nature, and if they've got to make it work, then my strong preference is deference. People who actually have to do the work need to have the product as easy to work with as possible.

MS. TOWNE: We didn't spring this on them. We either described it or explained the rationale with the staff.

CHAIR LUCE: That's what I want to say as well. You've been working with staff on a regular basis with this.

MS. TOWNE: Yes.

CHAIR LUCE: So I'm very comfortable with it.

MR. IFIE: I would like to hear from staff. They can speak for themselves and hopefully they will support what you just said.

MR. FIKSDAL: I think it's reasonable to have this organized this way. It seems more logical. I don't think there's any problem. It just takes a little more work to take pieces and parts out. I think it will take some additional time of the code reviser to work everything out, but we have to send everything in anyway. So as long as we're doing an overhaul of the rules anyway, this is a good addition as far as I'm concerned.

MS. TOWNE: It was our sense that the rules were an accretion not unlike a coral reef. Century by century it builds up, and if you sliced it and you looked at it in cross-sections, you would say what is that doing over here and why does it say it twice? It was not a model of clarity, and my goal is that anybody can pick up our rules and figure out what the heck we intend. It would be a novel thing for an agency, but it seemed like a worthy attempt.

CHAIR LUCE: Allen, could you explain how staff intends to proceed now that Hedia and Chris have finished their parts.

MR. FIKSDAL: Right. I think that gets into this rule schedule; that generally what we're going to do is take all the information that Hedia and Chris have given us. Chris has done a great job of editing the rules. Hedia just gave us a bunch of information that really dealt with water quality, water quantity, wetlands, pared that down. We got it Friday afternoon, late Friday afternoon. We haven't really had a chance to look at it. What Mike, I and Irina plan to do is first take all these parts and pieces and give them to Tammy and have her put them into a coordinated section according to this as much as we can, and then we're going to take that document and again in a month the three of us are going to sit down and go over line by line the whole rules and see if there's anything that we think is just outrageous or we can't live with or think should be changed. When we get done with that, we'll bring that back to the Council for you to review.

MS. TOWNE: Allen, before you go on, on behalf of Hedia and myself, if you, in the course of your analysis, find there's a better way to do any of this, there's no pride of authorship. Please feel free to amend as appropriate.

MR. FIKSDAL: We will. I remember seeing some parts in some of the rules that I think are a little far fetched, and we'll try to change those.

CHAIR LUCE: Okay.

MR. FIKSDAL: So we're going to go line by line and see what we come up with. I think in this purple sheet you see a rules adoption schedule. This is a modification of Chuck Carelli's original

schedule, and then if you look, anything below the line is starting at the present. You see the first thing was EFSEC members complete review. That was last Friday. That was getting Hedia's stuff in. We'll have Tammy finish her clerical edits by the 25th. Mike, Irina, and I are scheduled for the day of the 27th to go over all the rules. We will get those back to Tammy for some edits. What I've put -- I don't know if this is correct because I haven't talked to Dave at all -- but the administrative draft SBEIS is due the 15th of March.

MR. REICH: I think it's reasonable.

MR. FIKSDAL: That's reasonable. Okay. Then I'm thinking the next thing was to issue a revised CR 101. In the last CR 101 that the Council issued for these rules, it states that the Council is going to adopt rules or standards for combustion turbine projects, and these rules have morphed into rules for all Council projects. And so I think we have time, and it probably wouldn't hurt to issue a revised CR 101, which is easy to do the kind of updates the Council intends to do, saying that the Council intends to adopt rules pertaining to all rules and standards or standards pertaining to all projects and other administrative changes, something like that, just to let people know. Let's see. The next on the list was the small business economic impact statement and benefit cost analysis, that are expected to be finished somewhere near the end of March.

MR. REICH: Yes, that would be reasonable.

MR. FIKSDAL: I don't know if we need them by then because we will go on and have some more dates. I haven't checked, but I'm assuming we have to submit all our rules to the Ordered Typing Service (OTS) and the Code Reviser prior to issuing the CR 102. So the code reviser puts them all into sequence, gets the wording and everything right. And we've been told that you shouldn't even think of sending anything over there until the end of the session because they're the people who write up all the bills, and that's priority for them. So as soon as the session is over, which is supposedly March 11, one would think they would have more time. So we would be submitting all those rules for them. I know Jim has talked about holding some sort of public meeting allowing for limited comment once we have the changes to all the rules in the package. Probably have a Council meeting or some type of event. Then we need some editing time of those rules. Then I have the Council approving issuance of the CR 102 about, well, it's the Council meeting of May 3 and then would schedule public hearings on those rules at that same date. We file the CR 102 on the 5th. You have to file it before noon on the 5th, if you want it the first part of May. Then the CR 102 is published, and it would be May 19. Then we hold public hearings and on and on and on. These little shaded areas are the dates and things that I added from Chuck's original schedule that he had. Ultimately we would hold the hearings in mid-June. We would have to complete the Concise Explanatory Statement in mid July and respond to the comments by August. And then the Council would issue its CR 103 in mid-August and file the CR 103 the first of September, and the rules would go into effect, if this all went according to plan, on October 2.

CHAIR LUCE: Sounds reasonable. I wish it was faster, but it sounds reasonable.

MR. FIKSDAL: Let's see. So that's kind of the schedule and the plan and what I think is going to happen.

CHAIR LUCE: Questions, Councilmembers?

MR. FIKSDAL: I think, Dave, I'll get with you and look at the schedule because we really don't need the finalized stuff that you're doing until near issuance of the CR 102 which isn't until May. So you may have some time. Of course, we don't want you to spend that whole time working. We want you to finish it as soon as possible.

MR. REICH: Right.

CHAIR LUCE: SEPA DNS.

MR. FIKSDAL: Let's talk about CO2 rules a little bit.

CHAIR LUCE: Yes. Let's do that. Good idea.

MR. FIKSDAL: In your packet there's a revised draft of the CO2 rules, and we have copies of that for anybody in the audience that wants them. They're on a brown sheet of paper. Tim Sweeney has authored some edits, and I looked at it and have some changes. I suggested some changes, and this is a compilation of those changes, and I think we need to keep looking at the CO2 rule. We all realize there is some legislation, but you never know what's going to happen. I think the Council needs to look at this. I don't think you need to act on it today, but I think this is just to point out that there have been some changes. You may want to start looking at this, and if you have any comments on them, get back to me.

The other thing that you have is a little map I drew. I was kind of interested in the time line that was in this, trying to figure out if they made sense, and I guess they do. Irina, Mike, and I will look this over when we're going through all the rules, but this is just to help me figure out who did what and when and how it went. In this I found out there's one piece missing, and that is you go down where it says SCA signed. It says Section 7. At 120 days go off to your left and third-party investment, then you start construction. Then partial payment 20 percent, and then you keep going. And the independent qualified organization may delay contracting because they saved the partial payments until it's all paid. But there isn't a time when they have to complete it like there is on the line to the left. If they have full payment today, there's three years that they have to have it implemented. So we need some sort of time to put in there. That's the only hole that I've seen so far; otherwise, they seem reasonable. All the times seem sort of reasonable. You need to look at them and see if all of this makes some sort of sense.

CHAIR LUCE: Why don't you just plug the hole the same way they did? It should be consistent.

MR. FIKSDAL: That's fine. I can do that.

CHAIR LUCE: In talking to Tim, and, Tim, I appreciate your edits, your thoughts, and Hedia is not here to speak for herself, but we did speak to her. Hedia, Tim and myself were the three people on the CO2 rules subcommittee. My understanding is that there will be no more changes to the draft rule at this point in time going forward. So that's always subject to change.

MR. FIKSDAL: Substantive changes.

CHAIR LUCE: Maybe some clarifications but no more substantive changes.

MR. FIKSDAL: Because I know Chris has some or we'll assume she does.

CHAIR LUCE: I understand. But you've seen the other rules. All right? And there's not much changed here. So what I'm trying to suggest is we do have this time line which has already been pushed out beyond where we were, and it's time to put pencils down. Now, that's not to say that we don't want to hear everybody's views. We do. But the CO2 rule has been scrubbed, rescrubbed, scrubbed two or three more times, so, please, if you do have comments, hopefully they're not substantive. We've had lots of opportunities to get substantive comments in. If they are editorial, hopefully you can get them to Allen real quickly, so we can get those made. That would be really, really helpful. And as Allen also said the legislation continues to go forward. House Bill 3141 is on the second reading. I don't know. Today is the day, and I have reason to believe it will be brought before the full House later today. So we will see what happens.

MR. FIKSDAL: SEPA. There's two pieces of paper stapled together. There's an email to me, and it's dated January 16, 2004. It's from the Department of Health. You recall that we issued a DNS for the SEPA rules, and we had one comment on that DNS, and it was from the Department of Health.

MS. TOWNE: This is DSHS.

MR. FIKSDAL: DSHS, excuse me. I'm sorry. So it's suppose to say DSHS on the next page. I assumed. This is a draft response to that comment. Basically what the person was commenting about is the Power Planning Council or whatever their name is now had developed a fifth power plan, and the suggestion is maybe the Council should wait until that power plan is developed to see what the mix of resources would be, and it may impact what kind of rules that the Council would adopt. And basically the response that I'm proposing is that I don't think it makes any difference what the mix of the resources is. The Council has jurisdiction over certain types of energy facilities. If someone is going to build those energy facilities, they have to come to the Council, and the rules that the Council proposes adopting would cover those under its jurisdiction. And I don't think waiting for a power plan is going to make any difference in the types of rules or the subjects that the Council would want to consider. That is the summary of that.

CHAIR LUCE: I would agree. Anybody that has comments maybe we should get them to Allen within the next several days.

MR. FIKSDAL: What SEPA says is for the DNS you can do several things for responses. One, you can acknowledge the comment and just put it in a file, you can send the response back to the commenter or you could hold a public meeting and do lots of things. What I propose is once we finalize this, I will send the response back to the commenter, and then we will put it in the file, and that should be the end of the DNS.

CHAIR LUCE: Agreed. Thank you.

ITEM NO. 7: EFSEC OPERATIONS

CHAIR LUCE: The next item on the agenda is EFSEC operations. You want me to context this a little bit?

MR. FIKSDAL: Sure.

CHAIR LUCE: I think everybody is pretty familiar with this issue, but the question has been raised as to how we allocate our costs. There's been different statutory provisions, but the two that come to mind are costs allocated to applicants and licensees. And the statute provides, and I'll paraphrase it because I don't have it right here in front of me, but project applicants shall be charged costs which are directly associated with licensing those projects, and licensed projects shall be charged costs directly associated with monitoring and evaluating those projects. EFSEC also has a number of other functions to perform, including rule making, but other functions as well. So the question has been raised to whether and to what extent those other functions can be charged either to applicants or to licensees. And we're having an informal policy discussion in formulation as a result of some questions that have been raised, and we will finish that in a timely fashion to allow us to make a decision to go, if appropriate, to CTED and to the legislature to seek general fund money for such funds as are necessary to carry out our mission.

So I asked Allen to lay out for us, to the extent that he could do so today, some overview of how our costs do relate to this issue. So, Allen.

MR. FIKSDAL: What I've done is give you a piece of paper, it's a legal size paper, horizontal landscape view that's entitled EFSEC Budget Items. On the left is a column that is budget objects that the state uses, and what I did was copy the description of those objects right out of the OFM budget manual or coding manual, whatever it is, and describing what is covered under those objects. And then I tried in the next three columns to the right, application review, compliance monitoring, and other, tried to kind of lay out some of the activities that the Council has that go into each of those budget items. And for me we have to charge everything we do to some object in here, and so I was trying to figure out and kind of lay a basis of what types of things are charged to those budget items like salaries, the review of applications, studies, prefiled testimony, exhibits, transcripts, attendance at hearings, field trips, travel time, regular meetings and special meetings where applications are discussed. For the salaries, that's EFSEC staff and Jim. If you're doing it directly to an application, those are obvious what it is. Compliance monitoring is the same and the other is "other." I haven't really defined a lot of these others, but what I was trying to do is look first at what is directly attributable to those different compliance monitoring and application review. Salaries and benefits are about the same.

Contracts. We usually have independent consultants or interagency contracts for application review or compliance monitoring. Those are pretty simple; that they're either for application review or compliance monitoring or if we had one it might be in "other."

Business services. This is kind of all the overhead, a lot of overhead stuff, what people call overhead -: supplies, materials, communication, utilities, rentals, leases, repairs. I think in looking at those items that come under supplies and materials, I don't think there are or I guess I felt that everything that we used, pencils pens, papers, whatnot, it's directly billed to either application review or compliance monitoring. It isn't a big item, and to break it out or try to have some sort of percentage in "other" is pretty impractical.

Communications. These are telephone bills or faxes, letters, our postage. I think Fed Ex went under this. Almost all of those things are usually attributable to either application review or compliance monitoring. Utilities will be the same thing. All of it's going to be charged to either compliance monitoring or application review. Same thing with rentals, leases. We don't do repairs, alteration, and maintenance. Printing reproduction we do if we do EISs and whatnot. Those are pretty easily attributable to things. Employee professional development training, I guess those could lead to -- well, I guess if we are trying to develop our staff, and the reason we are developing the staff and providing training is so they can execute their job more appropriately, and their jobs are for site certification and compliance monitoring. That's why we're here. So I think all of those costs could be attributable to those categories.

Subscriptions. Again, I don't know if you consider our subscription to *Clearing Up* as attributable to monitoring and application review, but I think it is.

Facilities and services. I think this is the state's charge from Thurston County. Data processing we don't do.

Attorney General services. I left that blank because I think that's an area we need to think about. There are specific items that Ann charges when she's looking at an application or compliance monitoring, and I guess the question is should some of her time be attributed to "other" or not? And if we are looking at the future, if we are going to protest something in the future, we need to decide if we need to have a category that is in "other" rather than application and compliance monitoring.

Personnel services. That's a small charge. We get charged by the Department of Personnel. All those would be spread across the plane for application review and compliance monitoring. Insurance would be the same.

Other purchased services. These are specific purchase services. I think Shaun is an "other purchased service." Her contract is there, and that's attributable to application review and hearings and if we ever have hearings for compliance monitoring. We don't have vehicles.

Audit services. We hope we don't have any.

Administrative Hearings service. That again would be specific to ALJ and would be charged to a specific project.

Archives and record management. That's a type of activity. I guess we could say that that is an activity archiving all the application records and the compliance monitoring records. We don't do OMWBE services. Other goods and services that's kind of a catchall, and that would be as required. But there could be others that would be charged that would be directly attributable. Travel. Again, you have to look at where you're going and what you're going for and what it would be charged to. But I could see that other governmental conferences or energy related meetings might not be attributable to these things that could be considered and looked at as things budgeted for.

Capital outlays. The first, JA is furnishings, equipment, computer software. I think that's all attributable to application processing and compliance monitoring. JC, furnishings, equipment, and software, is the same. The next page, relocation costs. If we ever have to move or need to move those get charged to those two. We don't do interagency reimbursements or we don't reimburse agencies, but this interagency is actually when other agencies give us money. It's not when we give them money. So we don't do it.

And then there's indirect. This is the CTED indirect upon salaries and wages. I think it's about 31 percent now. Employee benefits. Well, you combine salaries and wages to 31 percent.

Personal services contracts. We don't have an indirect on that. We have in CTED what's called a direct or transaction assessment. For this year we were just billed \$79,279. Last year CTED conducted over 8,000 transactions, fiscal transactions, for us. And the projection was that this fiscal year we'd get up to 10,000 the way our line was going. They tracked it and had a graph that showed for the last five years the number of transactions we do. So the way CTED worked it they looked at all the transactions that their fiscal office conducted, and they divided it all out and charged all the different divisions their share of the transaction costs. So every time we put in a bill -- let's say we get a telephone bill for a hundred dollars -- that will be charged according to our percentage wise to nine different codes. Each one of those codes is one transaction. So everything we do we either have one or more transactions associated with it. That's how come we get charged so much.

CHAIR LUCE: They don't want us to fumble the codes?

MR. FIKSDAL: No, each one has to be put in separate in the account. Somebody has to do it somehow.

CHAIR LUCE: Okay.

MR. FIKSDAL: They have some money, and you have to put it into that account. That's a transaction. Goods and Services. The rest of these indirect we don't get charged for.

MS. TOWNE: The only question I have is regarding audits. How can you not be audited or is it CTED that's audited?

MR. FIKSDAL: I don't know. We haven't ever had any charges for audits.

MS. TOWNE: Then it must be CTED. But nobody has ever come and checked your books? You're lucky.

MR. FIKSDAL: Our books are CTED's books.

MS. TOWNE: That's probably why.

MR. FIKSDAL: CTED had audits recently and they have had several findings by the auditor, and they're trying to correct those. But the portions that they audited, there weren't any findings against us. Whether they audited us -- or they did in fact. They talked to us about contracts.

MR. MILLS: That was about contracts. That was a separate issue.

MR. FIKSDAL: Anyway what I'm trying to do with this is try to form a basis for you to start thinking about the types of activities where you think those activities could or could not be attributable to compliance monitoring or application review. There are some categories that I think we can concentrate on. Some of the others I think are relatively minor, like supplies and whatnot that we don't need to add to the burden of separating out. Anyway that's as far as I've gotten.

CHAIR LUCE: Application seems fairly straightforward relatively speaking.

MR. FIKSDAL: Yes.

CHAIR LUCE: Okay. None of it is straightforward. The compliance monitoring and review seems --

MR. FIKSDAL: That's pretty straightforward, too. I think we were looking at Columbia Generating Station. When Mike was over to visit the counties for emergency preparedness, then he charges it to compliance monitoring, his travel time and everything.

CHAIR LUCE: That's straightforward. What I was going to ask is, there are some licensees which have licenses, but there are no activities or very, very limited activity.

MR. FIKSDAL: Right.

CHAIR LUCE: And we basically divide the costs of EFSEC operations among those licensees.

MR. FIKSDAL: That's correct.

CHAIR LUCE: So you can hypothetically have a licensee who holds a license, which is a valuable commodity. Don't get me wrong. It's a valuable license. But there's nothing going on.

MR. FIKSDAL: That's correct. Like those transaction costs.

CHAIR LUCE: Right.

MR. FIKSDAL: They get a portion of those transaction costs. They have to pay a portion of those transaction costs. Rent, they have to pay a portion of the rent. Supplies, they pay a portion of the supplies.

CHAIR LUCE: I guess what I'm asking is, would another way to do this be a two-tier approach where you would have licensees who had projects up and running where there was real value being received? I mean their projects were generating power and they were making money, and then there were licensees who just basically had a big hunk of dirt and piece of paper. And a two-tiered cost allocation basis might say; all right, for the piece of dirt there is Price A, and for those of you who have projects up and running there is Price B because there's real value.

MR. FIKSDAL: In fact, we kind of do that. I don't recall the percentages that we have developed for all the different projects. Ones that are active are charged a higher percentage of these indirect costs than the ones that have the inactive status, the Sumas's, Wallula's.

CHAIR LUCE: Maybe there's nothing there then.

MR. FIKSDAL: No, you're right. We try to take that into account. Whether we have the right percentage is maybe something we discuss. This morning Tony Ifie and I were discussing something in another way to kind of characterize some of these charges. One is a direct charge;

one is an indirect charge. And what was the other one, Tony, we were talking about? Being charged directly, indirectly, and not at all attributable. Let's say attributable. So it would be attributable directly, indirectly attributable to something, or not attributable at all.

MR. IFIE: One of the points was that some of the costs might not be attributable or not directly associated with it. So we have to look at what language belongs here, attributed or associated. So there are all kinds of different ways of formatting the layout, depending on what we are trying to get to. So what is a good beginning? What we have here is a good beginning of starting the discussion. But you're right. We can keep going.

MR. FIKSDAL: I think we need to keep going and keep thinking. Ultimately I'll need something like this, so this summer when we start working on the next biennial budget I'll be able to categorize. If there is, if the Council ends up with a policy or decision that there are some activities that are not directly attributable to either compliance monitoring or indirectly attributable to compliance monitoring or application review, then we need to know what those activities are, how much that activity is going to occur in the next biennium, and then I can estimate some cost, so that we can put that in our budget.

CHAIR LUCE: Right.

MR. FIKSDAL: So that's why I laid it out this way because I'm going to have to know this way or how it ends up.

CHAIR LUCE: All right. Your next step after this is to start putting dollars associated with it.

MR. FIKSDAL: I don't know. I think one is to either identify more activities in the columns. I don't know if you want to -- we talked a little bit about conferences.

CHAIR LUCE: Right.

MR. FIKSDAL: Is it going to be policy? And I think ultimately is it going to be the policy of the Council that conferences, somehow, are not directly or indirectly attributable to compliance monitoring or application review and need separate funding?

CHAIR LUCE: Okay. That's a good question.

MR. FIKSDAL: So for each one of these categories is there some activity that can go into this other column?

CHAIR LUCE: Well, I think you've indicated conferences.

MR. FIKSDAL: Conference is an easy one. Now I would like the Council's help in thinking whether the "other" column needs to be filled in more or not.

CHAIR LUCE: Why don't we work on this in the next couple weeks and try and get back to Allen with suggestions on what might go into other.

MR. FIKSDAL: For salaries you probably won't deal with salaries, but if there's some sort of activity that you see staff doing for salary and benefits that isn't directly attributable or indirectly attributable to compliance monitoring and application review, what is that? So we should be listing that in the "other" category. In the next biennium we can look at what level of work that may be and how much it may cost.

CHAIR LUCE: Right. Does that sound like a reasonable way to proceed? Do we have any comments from the public with respect to the issue which basically boils down to whether EFSEC adopts policy that either continues the status quo, which is one option, or goes for grants made, such as our friends upstairs do in Energy Policy, or goes to the legislature for general funding? It does have some policy ramifications down the line, so just think about it and get back to us.

MR. FIKSDAL: If you want a copy of this to keep, I'll be more than happy to give you one or send you one.

MS. TOWNE: Mr. Chairman, is our analysis to be within the framework set out in 80.50.071(1)(b)? Are those the magic words we should be considering?

CHAIR LUCE: I don't have the statute.

MS. TOWNE: "Each applicant shall in addition to the cost of independent consultants... pay such reasonable costs as are actually and necessarily"

CHAIR LUCE: Attributable to.

MS. TOWNE: "... incurred by the Council in processing an application."

CHAIR LUCE: It seems to be a fairly good guideline. I couldn't find anyplace else in the statute where it mentioned money specifically. You can argue by implication, as I have on occasion, that if that's the only place in the statute that mentions money, then other activities by implication would be encompassed within that.

MS. TOWNE: What I'm looking for is compliance monitoring.

MR. FIKSDAL: It's the same thing but further down.

MS. TOWNE: Oh, further down.

CHAIR LUCE: There's a Sub A and a Sub B.

MR. FIKSDAL: Further down the page.

MS. ESSKO: It's under five.

CHAIR LUCE: It's the next sub down, Chris.

MS. TOWNE: Yes, C. It's Sub C, "... necessarily incurred by the cost of inspection, verification, and compliance," so that's the framework. So whatever falls outside Part B and Part C has to be in "other."

CHAIR LUCE: It depends upon whether you narrowly construe that or broadly construe that.

MR. FIKSDAL: I think that's the policy that we would like the Council to look at.

CHAIR LUCE: That's the policy we're looking at.

MS. TOWNE: So the operative term is "actually and necessarily."

CHAIR LUCE: Right. For the past as far as I know 20 years or so it's been interpreted to be everything.

MS. TOWNE: How can you run a railroad if there aren't any rails?

MR. FIKSDAL: Tracks or rails?

CHAIR LUCE: But the question has been raised. It's a serious question, so we're going to look at it. We may go in a different direction. Next issue.

MR. IFIE: So I suggest we have a schedule for developing the policy just like we have for the rule making. That way we have a target date in mind.

CHAIR LUCE: Okay. That's a good idea.

MR. IFIE: That way we have a process before now and then to get there.

CHAIR LUCE: Okay.

MR. IFIE: So I hear Allen saying June, June or July.

MR. FIKSDAL: I know this summer we're going to have to start working on the next biennium. Mike, when do we usually do that?

MR. MILLS: July and August.

MR. FIKSDAL: That's right. I'm always gone in August, and Mike is always doing that. So we have to have it by the end of July.

CHAIR LUCE: Can you come back to us? Would you email us a schedule?

MR. FIKSDAL: Do you want me to do that?

CHAIR LUCE: You recommend a schedule.

MR. IFIE: Do you need any help with the process? The issues that we need to do are the policy that we're looking at that would involve the public.

CHAIR LUCE: We are involving the public. That's why I was asking the public here if they had any comments. Not today I guess.

MR. LaBORDE: I have a question before I comment. Has this ever come up as an issue at any past rule making? This is the third or fourth major rule making that EFSEC has done.

CHAIR LUCE: It's the first rule I've been associated with.

MR. LaBORDE: Before you there was one five or six years ago.

MR. FIKSDAL: Yes. It didn't come up then. I think the only other major one was in the mid to late '80s that we had some relatively sensitive rule making.

MR. LaBORDE: I wouldn't say that the Energy Coalition has an official point of view on this, but I can't imagine that we would stand behind anything but the status quo. If it's been operating for this long, it seems like the regulated are in this case the appropriate people to pay for everything that comes out regulating in this process, whether it's just making sure that applicants stay in compliance to making sure there are rules to govern the application process.

CHAIR LUCE: Well, you might continue to look at this issue. We're obviously not going to resolve it here today, but over time I think we'll take a hard look.

MR. FIKSDAL: There's long philosophical discussions we can all have. If you're developing rules for applications, I guess the applicant would offer why are we paying for something that's going to affect somebody in the future and not us?

MR. LaBORDE: I guess the other question that comes to mind is with UTC; who pays for rule making? I mean there are not a lot of parallels to EFSEC in other aspects of Washington government. UTC is certainly not a perfect one. Maybe that provides some guidance.

CHAIR LUCE: No.

MS. TOWNE: But they're general funded, are they not?

MR. SWEENEY: UTC? No, we're not general funded.

MS. TOWNE: Not at all?

MR. SWEENEY: Not a penny.

MR. FIKSDAL: Where do you get your money?

MS. TOWNE: The people regulated?

MR. SWEENEY: Yes, but keep in mind we regulate them continuously. It's not like it's fee based or taxed based. It's a percentage of their regulated revenue, state regulated revenue.

ITEM NO. 8: EFSEC CONTRACTS

<i>FY 2005 Emergency Preparedness</i>	<i>Mike Mills, EFSEC Staff</i>
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CHAIR LUCE: EFSEC Contracts, emergency preparedness, Mike.

MR. MILLS: We have several contract matters to bring up today. The first is I believe in your packets. There was a copy of Resolution 287, Amendment 1, and that's the current guidelines we are using for the Columbia Generating Station Emergency Preparedness Program. I think most members know that the emergency preparedness support is a key element of the Council compliance monitoring program. We fund four state agencies in six counties that participate directly in supporting and being prepared in the event of a radiological accident at Columbia Generating Station which is operating a nuclear plant as you well know. Those are annual contracts, and about this time of the year I first meet with the six counties, directly with the

emergency preparedness program manager, and I've scheduled those meetings for next week for five of the counties, and I have one other on March 10.

MR. FIKSDAL: Could you just go through what counties those are.

MR. MILLS: I have them listed here on the back. That's Adams, Benton, Franklin, Grant, Walla Walla, and Yakima, and it's those six counties because they're within a 50-mile radius of the nuclear plant. Benton and Franklin are, of course, the key. They're the closest, and the others are called ingestion counties. So I wanted to tell the Council that I was going to start meeting with the counties, and then with that information in hand, I'll sit down with the Military Department Emergency Management Division and negotiate a contract for the funding with them. And then I'll move on to the Department of Health, the Department of Agriculture, and Washington State Patrol. In addition to the resolution, there's two funding pages.

Resolution 287 Amendment 1 is actually the second four-year deal that the Council approved. There was an original 287 that covered four years prior to fiscal year 2002. The upcoming fiscal year 2005 will be the fourth year and final year of the guidelines that are expressed in Amendment No. 1. So as you can see, it's a fairly substantial program. It's over almost 1.2 million dollars committed into the current fiscal year to those departments and the counties. The resolution and the basis for that study that was done in 1997 allows for cost-of-living and mandated salary increases, and that's basically the only increases that have occurred in the program over what will now be seven full years.

So my starting point with the counties and agencies is to maintain current levels and tell me if you have changes in your salary or benefits. Some of these are union employees, so you have some union contracts involved, particularly at the county level. So, again, I just wanted to alert the Council that I'm starting that process for the emergency preparedness program and will come back to you in a month or six weeks with a proposal for approving the military contract. Then as I indicated I'll move onto the other three agencies that receive support. So those counties are subcontracts of the military department contract. So I'm not expecting any action today. I just wanted to brief you on the process that I'll be using for that program.

MR. FIKSDAL: It used to be that negotiations prior to I think '97 Mike said was a pretty long protracted deal between the agency and EFSEC until we had this study done and reached the resolution that said you're not getting any more; hold your costs down. It's worked very well, and the negotiations have been fairly easy.

MR. MILLS: Yes, they have been. Staff and Councilmembers and the utilities and the agencies have spent a great deal of time negotiating over small amounts of money. And with the adoption of the resolution seven years ago, we have, as Allen said, simplified that process greatly and don't seem to have the tension between the utilities and the state and county programs that provide the support for this program. How quickly I had forgotten that.

MR. FIKSDAL: Every year they wanted more money. State agencies wanted more money every year. It's just amazing.

CHAIR LUCE: Pain tends to pass. Memory of pain passes with time quickly.

MR. MILLS: So, again, I'm starting that process and will come back to the Council when I've got a firm proposal from the counties and from the military department.

<i>Ecology – BP Air Permitting</i>	<i>Mike Mills, EFSEC Staff</i>
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MIKE MILLS: The second item is a request from the Department of Ecology Air Program, and in your packets there should be an email from Alan Newman to myself dated February 6. He indicates that the BP Cherry Point air permitting work needs to be increased to cover extra costs associated with the present EPA and National Park Service comments that have occurred in the

review and comment time period for the Prevention of Significant Deterioration (PSD) and the Notice of Construction (NOC) preliminary approval permits. He estimates that additional work will require 50 hours and is requesting a budget increase of \$5,000. Staff supports this request and would ask that the Council entertain a motion to approve a contract amendment with the Department of Ecology Air Permitting Contract in the amount of \$5,000.

CHAIR LUCE: Do we hear a motion?

MS. TOWNE: So moved.

CHAIR LUCE: Second?

MR. SWEENEY: Second.

CHAIR LUCE: All in favor say aye.

COUNCILMEMBERS: Aye.

MS. TOWNE: Just for clarification, Mike, is the Park Service involved in the study of impairment of visibility in national parks?

MS. MAKAROW: Yes.

<i>Fish & Wildlife – Audit</i>	<i>Mike Mills, EFSEC Staff</i>
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MR. MILLS: The third item is a proposed contract amendment of the Department of Fish and Wildlife. I believe there should be a green sheet.

MR. FIKSDAL: Ugly green.

MR. MILLS: Ugly green, yes. It's been darkened at the bottom of the first page. In reviewing the 1 and 4 four-party agreement, you will recall that one of the conditions was that funding would go away for the Rattlesnake project. And that's one of the items that we had included in our current contract. And you will see under the compensation section there's an audit function and mitigation-Hanford function that's basically funded by Energy Northwest. In looking at the costs, and when I took away the WNP-1 audit and shifted that money into the mitigation to cover the cost for the first six months, that now as of December 31 will go away, I was a little nervous because they had spent about a thousand dollars. So I talked with the Fish and Wildlife staff, and I'm going to propose that we increase the Columbia audit account by \$2,000. This would provide a cushion for work that Fish and Wildlife staff would do in the event that there was audit work that was required during the next five-month period. Again, I'm viewing this as kind of an insurance to make sure that we don't get in a spot where we would exceed the approved contract amount. So in this case, staff would propose that we approve a \$2,000 increase in the Fish and Wildlife contract for the Columbia audit function.

CHAIR LUCE: I have a question.

MR. MILLS: Yes.

CHAIR LUCE: Fish and Wildlife was suppose to get back to us, correct me if I'm wrong, and tell us what they need in terms of addressing this longer term Wallula generation off-site mitigation project, right? Am I confusing things? Didn't they have a little off-site mitigation irrigation project that had been burned up there?

MS. TOWNE: That was Rattlesnake.

CHAIR LUCE: Rattlesnake. Am I confusing things?

MR. MILLS: You're confusing things. That was the firing range.

CHAIR LUCE: All right. Forget my comments then. How are we going to deal with Rattlesnake?

MR. MILLS: Well, following the four-party agreement and the commitment that the state's made to Energy Northwest, that requirement is off the shelf now. What we've asked is the Department of Fish & Wildlife to go back and look at the McWhorter property tied to the 3.5

million dollars that we subsequently received. We expect to hear from them in 60 to 90 days on pursuing that purchase of that property if that's still a viable pursuit. One of the other issues that we mentioned with the director and then we've been approached by staff is how you treat Operations & Management (O & M) for McWhorter, or if McWhorter would fall through, would we pursue other properties? Do we want to have an O & M provision or a condition that would set aside some of the money for ongoing O & M? I think Rattlesnake falls into that category, Jim. Once McWhorter is settled, I believe we're talking about going out with a Request for Proposal (RFP).

CHAIR LUCE: That would throw Rattlesnake in the pot.

MR. MILLS: And I would guess that the Department would approach the Council about that at that time. That's the message I've given David Mudd who's the staff person that manages this particular contract.

CHAIR LUCE: Okay. Thanks. Sorry about the confusion.

MR. MILLS: Again, we're proposing a modest increase in the Fish and Wildlife - Columbia audit function.

MR. FIKSDAL: Next issue.

MR. FRYHLING: You want to pass that? I move that we approve it.

MR. SWEENEY: Second.

CHAIR LUCE: All in favor say aye.

COUNCILMEMBERS: Aye.

CHAIR LUCE: Note for the record the representative for Fish and Wildlife abstained from the vote. Next item.

<i>Rulemaking Support</i>	<i>Mike Mills, EFSEC Staff</i>
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MR. MILLS: Next item is a contract called rule making support. This is a proposed contract with former councilmember Chuck Carelli to assist the Council in its rule making effort. We identify four tasks that we thought Mr. Carelli could help the Council with.

First was preparation of the Concise Explanatory Statement. Second was development of the final rule proposals and technical expertise to members in consideration of revisions to draft rules and any final changes that might need to be made. Third, assistance in preparation of the final record or rule making file, and, finally, a consultation with Councilmembers, staff, and others on requested issues that come out of the consideration of the proposed rules.

Staff on Friday, February 6, issued a legal notice in the form of a sole-source advertisement for proposing this as a sole-source contract. We believe Mr. Carelli has unique capabilities that justify his being a sole-source contractor. The requirement is we were to wait five days, which closed Friday the 13th at five o'clock, and we received no comments from any other interested persons in providing this service, so we believe we have met the sole-source advertisement requirement.

The next requirement, if we are to pursue this contract, would be to prepare the contract and file it with the Office of Financial Management (OFM), and it would be subject to the ten-day filing requirement and OFM approval because it's being offered as a sole-source contract. Following OFM approval then the Council would be authorized to enter into the contract. We would propose that the Council approve a contract with Charles Carelli in an amount not to exceed \$50,000, for the services that I described in support of the rule making effort.

CHAIR LUCE: Questions?

MR. IFIE: I was going to say I so move.

CHAIR LUCE: Second? Did I hear a second?

MR. SWEENEY: Second.

CHAIR LUCE: Discussion? All in favor say aye.

COUNCILMEMBERS: Aye.

MR. MILLS: All right. Thank you. Those were all the contract items that we had today. Again, thank you for approving those.

ITEM NO. 9: OTHER

Legislation	Allen Fiksdal, EFSEC Manager
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CHAIR LUCE: Legislation, Allen.

MR. FIKSDAL: As you know there are two bills in the legislature directly affecting EFSEC, Substitute House Bill 2340 and Substitute House Bill 3141. 2340 is regarding the electrical transmission lines. According to the status today it's in the Rules Committee on second reading. I don't know if there was some proposed amendments to the bill that would -- Ann, you're going to have to help me -- essentially require EFSEC to recognize local governments' efforts through growth management for location of essential public facilities.

MS. ESSKO: So the issue was to have EFSEC be bound as to the locational requirements of the local government without being bound as to the operational and construction requirement that EFSEC might want to propose language.

CHAIR LUCE: If the local government adopted such a court order, then EFSEC would be bound. But nobody has ever done it. So if they do, more power to them.

MR. FIKSDAL: Anyway it's still in the House. Substitute House Bill 3141 is the Carbon Dioxide bill. It's in the house rules, and I think the chair noted that it might move today.

CHAIR LUCE: It's on the second reading. We have indications it might move today, and, you know, stay tuned to TVW. They're ripping through those bills in a hurry.

MR. FIKSDAL: There's other legislation regarding the rules that we are watching but not participating, and the Governor's office is doing that. I think the -- let's see. I think the bill requiring significant legislative rules to be approved by the legislature is moving through one of the houses or has moved through the House, , and the other bill requiring approval of rules by the Governor has moved out of one of the houses into the other house now, and some other bills affecting government operations.

CHAIR LUCE: Is the renewable portfolio bill up?

MR. LaBORDE: There are a lot of changes that were happening to it over the weekend, and I think something is going to move today. But as even a couple hours ago it was still up in the air.

LNG proposal	Jim Luce, EFSEC Chair
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CHAIR LUCE: That's what I thought. All right. The only other thing I have -- maybe Councilmembers have some other things -- there was a *Clearing Up* article which I would ask Mariah to pass out today which indicated that we may get an LNG application by this summer for a project to be located in Whatcom County. So we'll wait and see, but it certainly is getting a little more public attention than it was earlier.

MR. FIKSDAL: I think it said September they plan to file with FERC and EFSEC. That's what the article thinks.

CHAIR LUCE: Allen says never believe that anything's going to happen until it happens, and that's probably pretty good advice.

MR. FIKSDAL: It ne ver happens the time you think it will.

CHAIR LUCE: However, there is a lot of smoke surrounding that particular issue, so we will wait and see. Certainly it would make for an interesting fall and the start of 2005.

ITEM NO. 10: ADJOURN

CHAIR LUCE: Anything else for the good of the order? Going once, twice, thrice, adjourned.

(Whereupon, the meeting was adjourned at 2:49 p.m.)